

U.S. Patent Application No. 10/521,673
Attorney Docket No. 10191/3725
Response to Office Action of May 1, 2008

AMENDMENTS TO THE DRAWINGS:

The attached Replacement sheets of drawings of Figure 1 replaces the original sheet containing Figure 1. Approval and entry are respectfully requested.

Attachment: One (1) replacement sheet and one (1) annotated sheet showing changes

REMARKS

With the cancellation herein without prejudice of claim 11, claims 10 and 12 to 19 are now pending and being considered in the present application, since claims 1 to 9 were previously canceled. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and the following remarks.

As to section one (1) of the Final Office Action, the drawings were objected to for being “improper and unacceptable for drawing illustration purpose[s].” Elements 2a, 2b, and 2c for the server-side have been amended as recommended in the Final Office Action. Accordingly, withdrawal of the objections to the drawings is respectfully requested.

With regard to section two (2) of the office action claims 10, 15, and 16 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 6,275,585 (the “Ablay” reference).

While the rejection may not be agreed with, to facilitate matters, independent claim 10 has been amended herein without prejudice to include the features of dependent claim 11, thereby rendering moot the present rejection.

Withdrawal of this anticipation rejection of claims 10, 15, and 16 is therefore respectfully requested.

Claims 11, 13, 14, and 17 to 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over the “Ablay” reference in view of U.S. Patent No. 6,604,024 (the “Braun” reference).

As an initial matter, claim 11 has been canceled herein without prejudice, thereby rendering moot the present rejection with respect to claim 11. The features of claim 11 have been included in independent claim 10. Applicant therefore discusses claim 10 below.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 10, which has been amended herein to include features of canceled claim 11, recites, in relevant part, “a gateway unit mounted in a vehicle which is connected on one side to at least one control unit in the vehicle and includes a link to at least one wireless network on the other side, ...wherein the at least one control unit is connected to the gateway unit via at least one vehicle bus and the gateway unit further includes at least one microcomputer, which is equipped with a software platform **permitting an expansion of software during operation.**” The Final Office Action does not at all address this feature of permitting expansion of software during operation. Indeed there is nothing in the “Ablay” reference that identically discloses or suggests the feature of a gateway unit that includes a **microcomputer**, which is equipped with a software platform **permitting an expansion of software during operation.** This critical deficiency is not cured by the “Braun” reference. The “Braun” reference simply relates to “protecting the microcomputer against the manipulation of the control program.” (See the “Braun” reference, column 1, lines 18 to 20.) Permitting an **expansion of software**, let alone **during operation**, is not provided. Thus, the “Ablay” reference by itself or in combination with the “Braun” reference, does not identically disclose or suggest all the features of claim 10, as currently presented.

Furthermore, the feature in claim 10 of a gateway unit that includes a microcomputer equipped with a software platform is not a mere arbitrary design choice, but is rather a significant feature which Applicant has discovered greatly improves a gateway unit in the context of the device of claim 10. As Applicant noted in the specification, “[i]t is essential for gateway control unit 5 itself to be freely configurable, so that it is possible to enter, activate, and/or replace access protocols for access by the gateway control unit to the control units connected to the vehicle bus via a wireless link.” (*Specification*, page 3, lines 29 to 31.) For at least this reason, a gateway control unit that includes a microcomputer equipped with a software platform permitting expansion of software during operation is provided. Thus, contrary to the Final Office Action’s assertions, these features are not merely a design choice, but are rather provided as new and non-obvious significant features that provide a calculated benefit.

Further, as clearly indicated by the Supreme Court, in order to sustain an obviousness rejection, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. (See *KSR Int’l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (2007)). In this regard, the Supreme Court further noted that “rejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there must be some articulated reasoning with *some rational underpinning*

to support the legal conclusion of obviousness.” *Id.*, at 1396. In contrast to the Supreme Court’s stated guidelines, the Final Office Action clearly has not provided any “articulated reasoning with *some rational underpinning* to support the legal conclusion of obviousness”; instead, the Office is relying on “mere conclusory statements.” The Office’s arguments are essentially that because the “Braun” reference teaches [the claimed features] . . . which the “Ablay” reference is lacking,” one of ordinary skill in the art would have sufficient skill and **motivation** to make the necessary modifications based on the teachings of the applied art to arrive at the claimed invention. However, this assumption is not only completely unsupported, but far-fetched, at best. Simply asserting that “Braun, for example, from the similar field of endeavor, teaches a gateway unit (100) includes a microcomputer (101) equipped with a software platform (101), and a non-volatile buffer memory (101 and 103) . . . which can be easily adopted by one of ordinary skill in the art to implement into the device in Ablay to provide any desired hardware/firmware/software implementation to fulfill the user’s request or designer’s choice” does not provide any meaningful reasoning as to why one of ordinary skill in the art would have been motivated to make the asserted modification; instead, the Office is simply stating, without any supporting evidence, that it would have been obvious to try the combination asserted by the Office. However, the “obvious to try” rationale is clearly insufficient to support an obviousness rejection, particularly when the Office has not established any finding as to: a) whether the problem addressed by the present invention was recognized in the art; b) whether there was any predictable or recognized potential solution to the problem in the art; or c) whether one of ordinary skill in the art could have pursued the recognized potential solution with a reasonable expectation of success.

Therefore, claim 10 is allowable, as are its dependent claims 13, 14, and 17 to 19. Withdrawal of this obviousness rejection is therefore respectfully requested.

Claim 12 has been rejected as being unpatentable over the “Ablay” reference in view of the “Braun” reference and U.S. Patent No. 7,127,386 (the “Mocek” reference).

Claim 12 depends from claim 10 and is therefore allowable for the same reasons as claim 10, since the “Braun” and “Mocek” references do not cure the critical deficiencies noted above with respect to the “Ablay” reference in support of the patentability of claim 10.

Withdrawal of the obviousness rejection of claim 12 is therefore respectfully requested.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of claims 10 and 12 to 19 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
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